

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

1

SENATE BILL 982*

Short Title: Small Business Assistance Fund. (Public)

Sponsors: Senators Jenkins, Foriest; Albertson, Apodaca, Atwater, Berger of Franklin, Boseman, Brock, Brown, Brunstetter, Clodfelter, Dannelly, Davis, Dorsett, Garrou, Goss, Graham, Hartsell, Hoyle, Jones, Kinnaird, Malone, McKissick, Nesbitt, Preston, Purcell, Queen, Rand, Snow, Soles, Stein, Stevens, Swindell, Tillman, Vaughan, and Weinstein.

Referred to: Commerce.

March 26, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE SMALL BUSINESS ASSISTANCE ACT OF 2009 AND TO
3 ESTABLISH THE SMALL BUSINESS JOBS PRESERVATION FUND IN THE OFFICE
4 OF STATE BUDGET AND MANAGEMENT WITH RELATED PROGRAMS
5 COORDINATED BY A TECHNICAL ASSISTANCE PROVIDER.

6 Whereas, North Carolina has historically provided assistance to small businesses
7 after natural disasters; and

8 Whereas, North Carolina and the State's small businesses face an economic disaster
9 of historic proportions; and

10 Whereas, unemployment approaches 15 percent in many North Carolina counties
11 and may ultimately exceed 10 percent for the entire State; and

12 Whereas, small business accounts for more than half of all North Carolina jobs and
13 more than 98 percent of its businesses; and

14 Whereas, small business has been especially hard hit by the global downturn and
15 resulting shortage of available credit; and

16 Whereas, this shortage of credit has caused businesses to be closed in record
17 numbers across North Carolina and rendered thousands more North Carolinians jobless every
18 month; Now, therefore,

19 The General Assembly of North Carolina enacts:

20 **SECTION 1.** Part 2I of Article 10 of Chapter 143B of the General Statutes reads as
21 rewritten:

22 "Part 2I. ~~One~~ North Carolina Small Business ~~Program~~ Assistance.

23 Subpart A. One North Carolina Small Business Program."

24 **SECTION 2.** Part 2I of Article 10 of Chapter 143B of the General Statutes is
25 amended by adding a new subpart to read:

26 "Subpart B. Small Business Assistance Fund.

27 **§ 143B-437.89. Establishment of fund; use of moneys; application for moneys from the**
28 **fund; disbursal; repayment; inspections; rules; reports.**

29 (a) Fund Established. – A revolving, special revenue fund to be known as the Small
30 Business Jobs Preservation and Emergency Assistance Fund is established in the Office of
31 State Budget and Management. This Fund shall be administered by a technical assistance
32 provider. The technical assistance provider shall be responsible for receipt and disbursement of
33 all moneys as provided in this section. Interest earnings shall be credited to the Fund. The Fund



1 consists of revenue resulting from funds appropriated by the State, repayments of principal of
2 and interest on loans, fees, and other amounts received by the technical assistance provider with
3 respect to financial assistance provided by the technical assistance provider, and any other
4 public or private funds made available to the Fund.

5 (b) Small Business Assistance Commission. – The Small Business Assistance
6 Commission is established.

7 (1) The Commission consists of the members specified in this subdivision:

8 a. Reserved for future codification purposes.

9 b. Reserved for future codification purposes.

10 c. Reserved for future codification purposes.

11 d. Reserved for future codification purposes.

12 e. Reserved for future codification purposes.

13 (2) It is unlawful for a current or former member of the Commission to, while
14 serving on the Commission or within two years after the end of service on
15 the Commission, provide services for compensation, as an employee,
16 consultant, or otherwise, to any business or a related member of the business
17 that is awarded a grant under this section while the member is serving on the
18 Commission. Violation of this subsection is a Class 1 misdemeanor. In
19 addition to the penalties imposed under G.S. 15A-1340.23, the court shall
20 also make a finding as to what compensation was received by the defendant
21 for services in violation of this subsection and shall order the defendant to
22 forfeit that compensation. If a person is convicted under this subsection, the
23 person shall not provide services for compensation, as an employee,
24 consultant, or otherwise, to any business or a related member of the business
25 that was awarded a grant under this section while the member was serving
26 on the Commission until two years after the person's conviction under this
27 subsection.

28 (3) At least 20 days before the effective date of any criteria or nontechnical
29 amendments to criteria, the Commission must publish the proposed criteria
30 on the Office of Budget and State Management's Web site and provide
31 notice to persons who have requested notice of proposed criteria. In addition,
32 the Commission must accept oral and written comments on the proposed
33 criteria during the 15 business days beginning on the first day that the
34 Commission has completed these notifications. For the purpose of this
35 subsection, a technical amendment is either of the following:

36 a. An amendment that corrects a spelling or grammatical error.

37 b. An amendment that makes a clarification based on public comment
38 and could have been anticipated by the public notice that
39 immediately preceded the public comment.

40 (4) Meetings of the Commission are subject to the open meetings requirements
41 of Article 33C of Chapter 143 of the General Statutes. All documents of the
42 Commission, including applications for grants, are public records governed
43 by Chapter 132 of the General Statutes and any applicable provisions of the
44 General Statutes protecting confidential information.

45 (c) Technical Assistance Provider Authority; Loan Terms. – The technical assistance
46 provider may approve for disbursements of moneys in the Fund to small businesses in
47 accordance with the provisions of this section. The technical assistance provider, in
48 consultation with the Small Business Assistance Commission, shall develop criteria, technical
49 specifications, policies, and procedures to be used in determining whether the conditions of this
50 section are satisfied and whether the activities described in the application are otherwise
51 consistent with the purposes of this section. As used in this section, "moneys" means a

1 disbursement from the Fund in the form of a loan, and "small business" means a business
2 whose annual receipts and number of full-time employees, combined with the annual receipts
3 and full-time employees of all related persons, did not exceed one million dollars (\$1,000,000)
4 or 100 full-time employees. A small business may apply for a loan for:

- 5 (1) Up to X percent (X%) of the projected cost of the proposed activities,
6 subject to repayment within X years at X percent (X%) interest.
- 7 (2) Up to X percent (X%) of the projected cost of the proposed activities,
8 subject to repayment within X years at X percent (X%) interest.
- 9 (3) Up to X percent (X%) of the projected cost of the proposed activities,
10 subject to repayment within X years at X percent (X%) interest.

11 (d) Eligible Purposes. – Moneys in the Fund shall be used for any of the following
12 eligible purposes:

- 13 (1) To guarantee commercial loans.
- 14 (2) To finance bonds to allow small business to better leverage federal stimulus
15 dollars.
- 16 (3) To provide emergency bridge loans where clear and apparent ability to repay
17 has been established but credit remains unavailable.
- 18 (4) To lend for other purposes related to small business job preservation as
19 approved or recommended by the Small Business Assistance Commission.

20 (e) Application. – Any small business may apply for moneys from the Fund by
21 submitting an application to the Small Business and Technology Development technical
22 assistance provider. The application shall list each of the following:

- 23 (1) The proposed activities for which the moneys are to be used.
- 24 (2) The amount of moneys requested for these activities.
- 25 (3) Projections of the dollar amount of private investment that is expected to
26 occur as a direct result of the proposed activities.
- 27 (4) An explanation of the nature of the private investment that will result from
28 the proposed activities.
- 29 (5) A requirement for any reports, disclosures, or information required by this
30 section or necessary for the technical assistance provider to fulfill its duties
31 under this section.
- 32 (6) The total compensation received for the previous year from the small
33 business and all related persons for each of the five highest-compensated
34 employees of the small business.
- 35 (7) Any additional or supplemental information required by the technical
36 assistance provider upon written request.

37 (f) Determination. – The technical assistance provider shall review an application
38 submitted by a small business, determine whether the activities listed in the application are
39 activities that are eligible for moneys from the Fund, and determine which applicants are
40 selected to receive moneys from the Fund. A small business whose application is denied may
41 file a new or amended application.

42 (g) Limitation. – A small business that is selected may not receive moneys from the
43 Fund pursuant to this section with an aggregate total of more than thirty-five thousand dollars
44 (\$35,000).

45 (h) Disbursements of Moneys. – The technical assistance provider shall not disburse
46 moneys for any loans until the small business has confirmed a method of repayment for the
47 loan. The terms for repayment established for a given loan shall apply through the period of
48 that loan. The technical assistance provider shall establish an account in the amount of the
49 moneys disbursed for each small business that is selected. Moneys shall be disbursed as
50 expended through warrants drawn on the Office of State Budget and Management. A small
51 business that has been selected to receive moneys shall use the full amount of the moneys for

1 the activities that were approved pursuant to subsection (d) of this section. Moneys are deemed
2 used if the small business is legally committed to spend the moneys on the approved activities.
3 For purposes of this section, approved activities do not include an increase in the total
4 compensation of any employee identified in the application under subdivision (e)(6) of this
5 section. A small business shall lose any moneys that have not been used within three years of
6 being selected. These unused moneys shall be credited to the Fund. A small business that loses
7 moneys pursuant to this subsection may file a new application. Any moneys repaid or credited
8 to the Fund pursuant to this subsection shall be available to other applicants as long as the Fund
9 exists.

10 (i) Cost Report. – After activities financed in whole or in part pursuant to this section
11 have been completed, the small business shall report the actual cost of the project to the Office
12 of State Budget and Management. If the actual cost of the activities exceed the projected cost
13 upon which the moneys were based, the small business may submit an application to the
14 technical assistance provider for additional moneys for the difference. If the actual cost of the
15 activities are less than the projected cost, the small business shall arrange to pay the difference
16 to the Fund according to terms set by the technical assistance provider.

17 (j) Inspection. – Inspection of a project for which moneys have been awarded may be
18 performed by personnel of the technical assistance provider. No person may be approved to
19 perform inspections who is an officer or employee of the small business to which the moneys
20 were disbursed or who is an owner, officer, employee, or agent of a contractor or subcontractor
21 engaged in the activities for which the moneys were disbursed.

22 (k) Administration. – The technical assistance provider may adopt, modify, and repeal
23 rules establishing the procedures to be followed in the administration of this section and
24 interpreting and applying the provisions of this section, as provided in the Administrative
25 Procedure Act.

26 (l) Legislative Reports. – The technical assistance provider shall prepare and file on or
27 before July 31 of each year with the Joint Legislative Commission on Governmental
28 Operations a consolidated report for the preceding fiscal year concerning the allocation of
29 moneys authorized by this section, including a separate listing of the moneys disbursed to
30 historically underutilized businesses. The report shall set forth for the preceding fiscal year
31 itemized and total allocations from the Fund. The technical assistance provider shall also
32 prepare a summary report of all allocations made from the fund for each fiscal year; the total
33 funds received and allocations made; the total amount of moneys repaid to the Fund, and the
34 total unallocated funds in the Fund.

35 Small businesses that have been selected to receive moneys from the Fund shall prepare and
36 file a report that shall include the following information:

37 (1) The total amount of private funds that was committed and the amount that
38 was invested in activities for which moneys from the Fund were made
39 available during the preceding fiscal year.

40 (2) The total amount and character of moneys received from the Fund during the
41 preceding fiscal year.

42 (3) The total amount of moneys repaid to the Fund during the preceding fiscal
43 year.

44 (4) A description of how moneys from the Fund and funds from private
45 investors were used during the preceding fiscal year.

46 (5) Details regarding the types of private investment created or stimulated, the
47 dates of this activity, the amount of public money involved, and any other
48 pertinent information, including any jobs created, businesses started, and
49 number of jobs retained due to the approved activities.

50 **SECTION 3.** Part 20 of Article 10 of Chapter 143B of the General Statutes is
51 repealed.

1 **SECTION 4.** There is appropriated from the General Fund to the Small Business
2 Assistance Fund the amount of X for the 2009-2010 fiscal year to be used for the purposes set
3 forth in Section 2 of this act.

4 **SECTION 5.** This act becomes effective July 1, 2009.